

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Winstar Communications, LLC)

Emergency Petition for Declaratory)

Ruling Regarding ILEC Obligations)

to Continue Providing Services)

WC Docket No. 02-80

JOINT REPLY COMMENTS OF LIGHTYEAR HOLDINGS, INC.
AND GLOBAL CROSSING LTD.

Michael Shortley
Senior Associate General Counsel
1080 Pittsford-Victor Road
Pittsford, New York 14534
Tel: (585) 218-8440
Fax: (585) 218-8579

Counsel for Global Crossing Ltd.

John J. Greive
Vice President of Regulatory Affairs and
General Counsel
1901 Eastpoint Parkway
Louisville, Kentucky 40223
Tel: 502-244-6666
Fax: 502-515-4138

Counsel for Lightyear Holdings, Inc.

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**JOINT REPLY COMMENTS OF LIGHTYEAR HOLDINGS, INC.
AND GLOBAL CROSSING LTD.**

Lightyear Holdings, Inc. and its subsidiaries ("Lightyear") and Global Crossing Ltd. ("Global Crossing" and, together with Lightyear, "Commenters"), on behalf of themselves and their subsidiaries, submit these Joint Reply Comments in support of the Emergency Petition for Declaratory of Winstar Communications, LLC ("IDT Winstar"). Grant of IDT Winstar's petition and the relief sought therein are in the public interest. Specifically, the Commission should enjoin Verizon and the other Regional Bell Operating Companies ("RBOCs") from disconnecting the customers of Winstar Wireless, Inc. ("Old Winstar") and should require the RBOCs to take the actions necessary to migrate Old Winstar's customers to Winstar Communications, LLC ("IDT Winstar") without delays or disruptions of service.

I. COMMENTERS' INTEREST IN THIS PROCEEDING

Commenters are competitive provider of telecommunications, data, and Internet services. Like many other carriers, Commenters have suffered from the effects of the slowing economy and the dramatic downturn in the telecommunications sector, and are reorganizing their operations under Chapter 11 of the United States Bankruptcy Code. It is critical to the success of

the Commenters' respective reorganizations that potential buyers have confidence that Commenters' operations, assets, and customer bases can be readily transferred to new providers. IDT Winstar's petition gives the Commission the opportunity to provide that security and thus facilitate the consolidations and asset transfers that are critical to the ongoing success of the competitive telecommunications industry.

A. Lightyear

Lightyear is a competitive local exchange carrier that provides local and long distance voice, data transmission, and web and data hosting services. Lightyear serves approximately 200,000 residential and small and medium business customers in 49 states and the District of Columbia, and controls approximately 50,000 access lines. Lightyear obtains facilities from incumbent local exchange carriers, including the RBOCs. On April 29, 2002, Lightyear filed for protection from its creditors under Chapter 11 of the Bankruptcy Code.

B. Global Crossing

Global Crossing owns and operates a worldwide Internet Protocol-based fiber optic network that spans 101,000 route miles and reaches 27 countries and more than 200 cities. Global Crossing provides a full range of data, voice, and Internet services, primarily to enterprise customers and carriers. In the United States, subsidiaries of Global Crossing provide interstate and intrastate services in all 50 states and the District of Columbia. Global Crossing currently serves approximately 90,000 customers, the majority of whom are based in the United States.

On January 28, 2002, Global Crossing filed for protection under Chapter 11 of the Bankruptcy Code. The same day, Global Crossing announced a *proposed transaction that, if consummated*, would result in Hutchison Whampoa Ltd. and Singapore Technologies Telemedia

Pte Ltd. holding a majority interest in Global Crossing.¹ Global Crossing does not currently intend to transfer assets or customers outside of that transaction. However, it is possible that the company, as part of that or another transaction, will be required to divest assets or customers.

II. THE COMMISSION SHOULD MAKE CLEAR TO THE RBOCs' THEIR OBLIGATION UNDER THE COMMUNICATIONS ACT

IDT Winstar's petition makes clear that the RBOCs are required, under the Communications Act of 1934, as amended (the "Act"), to provide IDT Winstar the services and facilities necessary for IDT Winstar to serve Old Winstar's customers and to aid in the transfer of those customers to IDT Winstar. Indeed, the RBOCs do not question their obligations as a general matter. Rather, they contend that their obligations are contingent upon IDT Winstar paying amounts allegedly owed to them for pre-petition services rendered to Old Winstar.

While the RBOCs' desire to be paid for the services they provided to Old Winstar is understandable, it does not justify non-compliance with the Act or damaging and inconveniencing end users.² Surely, such actions are not in the public interest. Therefore, the Commission should grant IDT Winstar's petition and require the RBOCs to assist in the prompt and orderly migration of Old Winstar's customers to IDT Winstar.

A. The RBOCs' Obligation to Provide Service to IDT Winstar Is Undisputed

The comments filed by the RBOCs in opposition to IDT Winstar's petition do not seriously contest, and in fact admit, that the RBOCs must provide to IDT Winstar the services

¹ The proposed transaction is subject to a Bankruptcy Court-supervised bidding process and the approval of the Bankruptcy Court. Thus, it is possible that Global Crossing ultimately will enter into a different transaction.

² Commenters take no position on the RBOCs claim for payment of pre-petition services provided to Old Winstar. That issue is one of bankruptcy law that is best addressed by the bankruptcy courts. In any event, resolution of that issue does not dictate the RBOCs' current obligations to provide services to IDT Winstar.

and facilities it needs.³ Those requirements are contained in Sections 201, 202, and 251, among others, of the Act.⁴ Further, the RBOCs must provide those services upon “just and reasonable” terms and conditions.⁵ Failure to meet these obligations is a violation of the Act.⁶

It appears from the record in this case that IDT Winstar has obtained or is in the process of obtaining state certifications and has entered into interconnection agreements with some of the RBOCs.⁷ Thus, IDT Winstar’s right to obtain the facilities it needs is clear. It is equally clear that the RBOCs’ failure to provide requested services or facilities in a timely fashion or on unjust or unreasonable terms is a violation of the Act. Therefore, the Commission should make clear to the RBOCs that they must satisfy the requirements of the Act and promptly provision the services and facilities requested by IDT Winstar without causing customer disconnects.

³ See, e.g., *In re Winstar Communications, LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket No. 02-80, Comments of Qwest Corporation in Response to the Emergency Petition for Declaratory Ruling of Winstar Communications, LLC (filed Apr. 29, 2002) (“Qwest Comments”), at 15; *In re Winstar Communications, LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket No. 02-80, Comments of SBC Communications, Inc. (filed Apr. 29, 2002) (“SBC Comments”), at 16.

⁴ For example, 47 U.S.C. § 201(a) states that: “It shall be the duty of every common carrier . . . to furnish such communication service upon reasonable request therefor; and ... to establish physical connections with other carriers.” Section 251(c) requires incumbent local exchange carriers to provide, *inter alia*, “interconnection with the local exchange carrier’s network” and “access to [unbundled] network elements.” 47 U.S.C. § 251(c).

⁵ 47 U.S.C. §§ 201(b) and 202(a)

⁶ *Id.*

⁷ *In re Winstar Communications, LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket No. 02-80, Emergency Petition for Declaratory Ruling of Winstar Communications, LLC (filed Apr. 17, 2002) (“IDT Winstar Petition”), at 4; Qwest Comments, at 8-9; SBC Comments, at 8. While Qwest claims that IDT Winstar misled Qwest and that Qwest believed it was Old Winstar that had requested interconnection, it provides no explanation for why Old Winstar would seek a second interconnection arrangement with Qwest while it was in liquidation or why Qwest would enter into an agreement in those circumstances.

B. The RBOCs' Threats to Disconnect Customers Are Unlawful and Contrary to the Commission's Policy of Avoiding Disruption of Service

In its petition, IDT Winstar alleges that the RBOCs' have refused to transition Old Winstar's customers to IDT Winstar.⁸ Instead, the RBOCs have threatened to disconnect Old Winstar's customers unless IDT Winstar agrees to pay the pre-petition debts of Old Winstar, which even the RBOCs concede has no corporate affiliation with Old Winstar.⁹ The RBOCs do not deny IDT Winstar's allegations, but rather insist that any disconnects will be the result of the actions of Old Winstar and IDT Winstar.¹⁰

The RBOCs' threats, and their refusal to provide service to IDT Winstar, are patent violations of the requirements of the Act. The RBOCs offer no statutory or case law giving them the unilateral right to deny service to a requesting carrier. Nor have the RBOCs made any claim that IDT Winstar will not pay services rendered to it. Thus, aside from their demand that IDT Winstar pay Old Winstar's debts, there is no basis for the RBOCs' refusal to provide service to IDT Winstar. Moreover, the RBOCs' claims for payment, even if valid, should be presented to the competent Bankruptcy Courts, not the Commission. In short, the Communications Act provides no basis for the RBOCs' denial of service to IDT Winstar.

Moreover, the impact of the RBOCs' threats, if they are carried out, will be felt above all by Old Winstar's customers, who will be without service. One customer, the General Services Administration, has submitted comments in this proceeding quantifying the consequences of a service interruption.¹¹ Regardless of the merits of the dispute between IDT Winstar and the

⁸ IDT Winstar Petition, at 1.

⁹ Qwest Comments, at 4.

¹⁰ *Id.*, at 2 and 10; *In re Winstar Communications, LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket No. 02-80, Comments and Counter-Petition of Verizon (filed Apr. 29, 2002) ("Verizon Comments"), at 19-20.

¹¹ *In re Winstar Communications LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket No. 02-80, Comments of General Services Administration (filed Apr. 29, 2002).

RBOCs, it is clearly not in the public interest to permit the RBOCs to disconnect customers. The fundamental policy underlying the Act is the protection of customers, and the Commission's rules and decisions have emphasized that service disruptions should be avoided at all costs.¹² Other than the RBOCs' obstinance, there appears to be no reason that Old Winstar's customers cannot be immediately migrated to IDT Winstar without interrupting their service.¹³ In view of the potential harm to end users resulting from disconnection, and the lack of harm to the RBOCs of being required to provide service to IDT Winstar,¹⁴ the Commission should enjoin the RBOCs from disconnecting Old Winstar's customers and should require the RBOCs to facilitate the migration of those customers to IDT Winstar.¹⁵

C. The Commission Should State its Support for Transfers of Assets and Customers of Distressed Carriers

As the Commission is undoubtedly aware, these are difficult times for the competitive telecommunications industry. Given the large number of telecommunications bankruptcies that are pending before the courts, there is little doubt that there will be additional sales of assets and customer bases. Lightyear is actively searching for buyers of certain of its telecommunications

¹² See, e.g., 47 U.S.C. § 214(a) and 47 C.F.R. § 63.60 *et seq.*, which discuss the requirements for discontinuance of service by common carriers. Similarly, the Commission's slamming and mass-migration rules were intended to regulate the transfer of customers and avoid intentional or inadvertent disconnects. 47 C.F.R. § 64.1100 *et seq.*; 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 00-257, First Report and Order (rel. May 15, 2001).

¹³ The RBOCs claim that IDT Winstar can order required circuits like any other carrier and that the RBOCs will fulfill those orders in due course. SBC Comments, at 10; Qwest Comments, at 15; Verizon Comments, at 24-25. Under the circumstances, the RBOCs' position that IDT Winstar should be required to wait for their "standard provisioning intervals" to obtain facilities is absurd. The circuits required by IDT Winstar are the same ones being used now by Old Winstar, and no action is required by the RBOCs other than changing the name on the bills. While Commenters agree that carriers ordering facilities should normally be required to wait their "turn," the RBOCs claims that they are prevented by their nondiscrimination obligations from provisioning IDT Winstar's circuits on an expedited basis, or that changing the name on a bill is an "assignment" under their tariffs, are nonsensical.

¹⁴ Indeed, the RBOCs will benefit because IDT Winstar will be paying for the services provided.

¹⁵ If they feel strongly about their entitlement to payment, the RBOCs can, consistent with Commission precedent, provide the services under protest. They must, however, provide the services while taking up their claims to payment in the appropriate forum, or risk the consequences of their failure to meet their obligations under the Act. *In re Hawaiian Tel. Co.*, Petition for Interconnection and the Provision of Communications Service, 78 FCC 2d 1062(1980).

assets. While Global Crossing is not currently seeking to sell assets, it cannot exclude the possibility that it will do so in the future. Most sellers will have pre-petitions debts like those allegedly owed by Old Winstar, and the RBOCs' desire to recover those funds is understandable. However, it is the Bankruptcy Code and the Bankruptcy Courts that provide the vehicle and fora for the RBOCs to raise those claims. Commenters respectfully submit that the Commission need not and should not concern itself with issues of bankruptcy law that are better addressed by the courts.

Assuming, however, that the Commission wishes to preserve and enhance competition in the telecommunications sector, it must make clear to the RBOCs that they are required by the Communications Act to provide services and facilities to purchasers of assets and customers, and that the RBOCs' claims to payment for pre-petition services do not exempt them from compliance with the Act. The consequences should the Commission fail to announce clear support for buyers of distressed assets are clear: increased customer dissatisfaction and disconnects; decreased choice in telecommunications providers for consumers; the elimination of much of the massive financial, societal, and governmental investment in the competitive telecommunications industry; and the slow but sure re-monopolization of the telecommunications industry. These results would be contrary to the Act and go against the public interest in competition.

Therefore, the Commission should take the opportunity to make clear that it will act to support, facilitate, and streamline the transfer of assets and customers from distressed companies to competent purchasers. It can do so by granting IDT Winstar's petition and requiring the RBOCs to take the actions needed to transfer Old Winstar's customers to IDT Winstar.

III. CONCLUSION

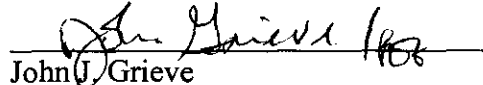
For the foregoing reasons, the Commission should grant IDT Winstar's petition and order the relief requested therein.

Respectfully submitted,



Michael J. Shortley III
Senior Associate General Counsel
1080 Pittsford-Victor Road
Pittsford, New York 14534
Tel: (585) 218-8440
Fax: (585) 218-8579
Email: michael.shortley@globalcrossing.com

Counsel for Global Crossing Ltd.



John J. Grieve
Vice President of Regulatory Affairs
and General Counsel
1901 Eastpoint Parkway
Louisville, Kentucky 40223
Tel: (502) 244 -6666
Fax: 502-515-4138
Email: johnng@lightyearcom.com

Counsel for Lightyear Holdings, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2002, I caused true and correct copies of the foregoing Joint Reply Comments of Lightyear Holdings, Inc. and Global Crossing Ltd. to be served upon the following persons by first-class mail unless otherwise noted:

Philip L. Verveer
Sue D. Blumenfeld
Sophie Keefer
Christi Shewman
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20036

Michael E. Glover
Edward Shakin
Ann Rakestraw
Verizon
1515 North Courthouse Road, Suite 500
Arlington, VA 22201-2909

Steven T. Perkins
Cavalier Telephone, LLC
2134 West Laburnum Avenue
Richmond, VA 23227-4342

Aimee Jimenez
Sharon J. Devine
Qwest Corporation
1020 19th Street, N.W., Suite 700
Washington, DC 20036

Suzanne C. Leslie
SBC Telecommunications, Inc.
One SBC Plaza, Suite 2900
208 South Akard Street
Dallas, Texas 75230

John H. Harwood II
Robin A. Lenhardt
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037

Jean L. Kiddoo
Kathleen L. Greenan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007

George N. Barclay
Michael J. Ettner
Personal Property Division
General Services Administration
1800 F Street, N.W., Room 4002
Washington, DC 20405

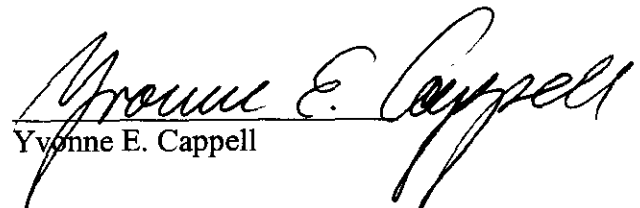
Christopher M. Heimann
Gary L. Phillips
Paul K. Mancini
SBC Communications, Inc.
1401 Eye Street, N.W., Suite 400
Washington, DC 20005

Laurie Selber Silverstein
Elizabeth D. Power
Potter Anderson & Corroon LLP
Hercules Plaza, 6th Floor
Wilmington, DE 19801

Pamela Arluk
Wireline Competition Bureau
Competition Policy Division
Portals II
445 12th Street, S.W., Room 6-B153
Washington, DC 20554
(BY HAND DELIVERY)

Carmell Weathers
Wireline Competition Bureau
Competition Policy Division
Portals II
445 12th Street, S.W., Room 6-B153
Washington, DC 20554
(2 COPIES BY HAND DELIVERY)

Qualex International
Portals II
445 12th Street, S.W., Room CY-B402
Washington, DC 20554
(BY HAND DELIVERY)


Yvonne E. Cappel